

REMARKS

This is a full and timely response to the outstanding nonfinal Office Action mailed September 22, 2005. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

Applicants first wish to express their sincere appreciation for the time that Examiner Pickett spent with Applicants' attorney Jim Kayden during a telephone discussion on May 1, 2006 in which Examiner Pickett indicated that the claims might be allowable if amended to claim sock-type headwear (*e.g.*, a stocking cap).

Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-14 are pending. In particular, Applicants have amended claims 1, 5, 8, and 12. The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims. Applicants believe that no new matter has been added and that a new search is not necessary.

Claim Rejections Under 35 U.S.C. §112

The Office Action states that claims 1-7 are rejected as being indefinite. Specifically, the Office Action alleges that it is unclear as to whether the claims are directed to articles capable of expended, collapsed, and storage states or to three articles in a specific state/arrangement. First, Applicants respectfully submit that the claims are directed to headwear capable of all three states and disposed in the storage state, consistent with the interpretation adopted by the Office Action for examination as well as the language of claims 1 and 5, "wherein said headwear is disposed in said storage state." However, for the purposes of expediting prosecution, Applicants have amended claims 1 and 5 to recite "headwear *capable of* having an expanded state, a collapsed state, and a storage state." (Emphasis added). Applicants submit that the above remarks and amendment obviate the rejection.

Applicants wish to clarify that the foregoing amendments have been made for purposes of better defining the invention in response to the rejections made under 35 U.S.C. § 112, and not in response to rejections made based on prior art. Indeed, Applicants submit

that no substantive limitations have been added to the claims. Therefore, no prosecution history estoppel arises from these amendments. *Black & Decker, Inc. v. Hoover Svc. Ctr.*, 886 F.2d 1285, 1294 n. 13 (Fed. Cir. 1989); *Andrew Corp. v. Gabriel Elects., Inc.*, 847 F.2d 819 (Fed. Cir. 1988); *Hi-Life Prods. Inc. v. Am. Nat'l. Water-Mattress Corp.*, 842 F.2d 323, 325 (Fed. Cir. 1988); *Mannesmann Demag Corp. v. Eng'd Metal Prods. Co., Inc.*, 793 F.2d 1279, 1284-1285 (Fed. Cir. 1986); *Moeller v. Ionetics, Inc.*, 794 F.2d 653 (Fed. Cir. 1986).

Claim Rejections Under 35 U.S.C. §§ 102(a) and 103(a)

Claims 1-14 stand rejected under 35 U.S.C. § 102(a) as unpatentable over the MV Sport Cap Tee and rejected under §103(a) as obvious over the MV Sport Cap Tee in view of U.S. Patent No. 6,507,956 to Kronenbeger. Applicants respectfully traverse these rejections.

Amended claims 1 and 5 read in pertinent part, as follows:

A headwear and clothing packaging system comprising:
sock-type headwear having a bottom portion and a top portion...

(Emphasis added). Similarly, amended claims 8 and 12 read in pertinent part, as follows:

A method of packaging headwear and clothing comprising the steps of:
providing **sock-type headwear** having a bottom portion and a top portion...

(Emphasis added). Applicants traverse the rejections and assertions in the Office Action and submit that the rejection of the above-listed claims under 35 U.S.C. §§ 102(a) and 103(a) should be withdrawn because the MV Sport Cap Tee and Kronenbeger, taken alone or in combination, do not disclose, teach, or suggest at least the highlighted portions in amended claims 1, 5, 8, and 12 above. In particular, neither the MV Sport Cap Tee nor Kronenbeger disclose, teach, or suggest a sock-type hat, a difference acknowledged by the Examiner in the above-mentioned telephonic interview with Applicants' attorney. In fact, both references disclose a baseball-type hat, having a bill, as opposed to a sock-type hat, which does not have a bill. The lack of a bill is significant and nonobvious for at least the reason that a bill significantly changes the conformation of a hat, and thus impacts the formation of the expanded, collapsed, and, in particular, the

storage conformation of the hat. Thus, applicants respectfully submit that claims 1, 5, 8, and 12 are novel and nonobvious over the art of record and request withdrawal of the rejections

Applicants respectfully submit that pending dependent claims 2-4, 6-7, 9-11, and 13-14 include every feature of independent claims 1, 5, 8, and 12, respectively. Thus, pending dependent claims 1-4, 6-7, 9-11, and 13-14 are allowable over the prior art of record for at least the reasons set forth for claims 1, 5, 8, and 12, above. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-14 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


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